

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

XXXXXXXXXXXXXXXXXX,

Plaintiff

Case No. XXXXXXXX-DT

v.

XXXXXXXXXXXXXXXXXXXXXXXXXX,

Defendant.

_____ /

Sample
FINAL INSTRUCTIONS

PROVINCE OF THE COURT

MEMBERS OF THE JURY:

You have now heard all the evidence in the case. It becomes my duty to give you the instructions of the Court on the law that applies to this case.

It is your duty as jurors to follow the law as I state it in these instructions, and to apply these rules of law to the facts as you find them to be from the evidence in the case.

You should not single out just one or a few of these instructions as stating the law, but you should consider all my instructions as a whole.

Also, you should not be concerned with the "wisdom" of any rule of law stated by the Court. Regardless of any personal opinion you might have as to what the law ought to be, it is your responsibility to accept the instruction as I give it to you. It would be a violation of your sworn duty to base a verdict upon any view of the law other than the one I give you in these instructions; by the same token, it would be a violation of your sworn duty to base your verdict upon anything other than the evidence you have actually seen and heard in the case.

I have told you before that I as the judge am independent of the parties here, and that I have no stake in the outcome of this case. Nothing I say in these instructions is to be taken by you as an indication that I have any opinion about the facts of this case, or what I think should be done with it. It is not my job to decide the facts in this case. That is yours alone to decide. But if, because of

something I've said or done during the trial, you think I may have some opinion about the way the case should be decided, you should simply ignore it.

Justice, through trial by jury, depends upon the willingness of each individual juror to seek the truth from the facts based on the same evidence presented to all the jurors, and to arrive at a verdict by applying the same rules of law as given in the instructions of the Court.

PROVINCE OF THE JURY

You have been sworn as jurors in this case to try the issues of fact presented by the charges in the complaint made by the plaintiff, and the answer made by the defendant.

You are to perform this duty without bias or prejudice as to either party. Our system of law does not permit jurors to decide cases out of sympathy, bias, prejudice or in reaction to public opinion. The plaintiff, the defendant and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just and proper verdict, regardless of whatever consequences that may follow.

BURDEN OF PROOF / PREPONDERANCE OF THE EVIDENCE

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of his or her claim, and to prove them by a preponderance of the evidence. The "elements" are the important ingredients of a claim. If the proof should fail to establish any element of the plaintiff's claim by a preponderance of the evidence in the case, then you must find in favor of the

defendant.

To prove something by a "preponderance of the evidence" means to prove that something is more likely true than not true. In other words, a "preponderance of the evidence" means evidence which, when it is considered and compared with the evidence opposed to it, has more convincing force, and produces in your minds a belief that whatever was sought to be proved is more likely true than not true.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, you may consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them. So even though the plaintiff, for example, may have the burden of proving something, you are not limited to considering just the plaintiff's witnesses or documents . . . you may and should consider all the applicable evidence from whatever source.

CREDIBILITY OF WITNESSES

(1) Part of your job as jurors is to decide how believable each witness was. This is your job, not mine. It is up to you to decide if a witness' testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness said, or only part of it, or you can believe none of it at all (even if the witness has not been contradicted). But you should, of course, act reasonably and carefully in making these decisions.

(2) Let me suggest some things for you to consider in evaluating each

witness' testimony.

(A) Ask yourself if the witness was able to clearly see or hear the events. Sometimes even an honest witness may not have been able to clearly see or hear what was happening, and may make a mistake.

(B) Ask yourself how good the witness' memory seemed to be. Did the witness seem able to accurately remember what happened?

(C) Ask yourself if there was anything else that may have interfered with the witnesses' ability to perceive or remember the events.

(D) Ask yourself how the witness looked and acted while testifying. Did the witness seem honestly to be trying to tell you what happened? Or did the witness seem to be evasive, or even lying?

(E) Ask yourself if the witness had any relationship to either side of the case, or anything to gain or lose that might influence the witness' testimony. Ask yourself if the witness had any bias, or prejudice, or reason for testifying that might cause the witness to lie or to slant testimony in favor of one side or the other.

(F) Ask yourself if the witness testified inconsistently while on the witness stand, or if the witness said or did anything off the stand that is not consistent with what the witness said while testifying. If you think that the witness was inconsistent, ask yourself if this makes the witness' testimony less believable. Sometimes it may; other times it may not. For example, you might consider whether the inconsistency was understandable or

explainable. You might also ask yourself if it seemed like an insignificant or common mistake, or if it seemed to indicate a deliberate attempt to mislead..

(G) Finally, ask yourself how believable the witness' testimony was in light of all the other evidence. Was the witness' testimony supported or was it contradicted by other evidence that you found believable? If you think that a witness' testimony was contradicted by other evidence, keep in mind that people sometimes do forget things, and that even two honest people who witness the same event may not describe it exactly the same way.

(3) These are only some of the things that you may consider in deciding how believable or reliable each witness was. You may also consider other things that you think shed light on the witness' believability. Use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight -- how much significance -- you think it deserves.

ISSUES FOR THE JURY AND THEORIES OF THE PARTIES.

I will briefly explain the issues in this case. In explaining the issues, I express no opinion of the facts, because you are the sole judges of the facts. If I should inaccurately or insufficiently state any particular fact in this case, then you are to disregard that, as you are the sole judges of the facts. You will consider all

the facts, the testimony from the witnesses, facts in documents, the physical facts and all legitimate inferences.

Insert case-specific instructions here beginning with the theory of Plaintiff and the theory of Defendant

It is the claim of the Plaintiff in this case that ...

The Defendant denies ... and says ...

Continue with the elements of proof on each cause of action, damages and other case-specific instructions

VERDICT--UNANIMOUS--DUTY TO DELIBERATE

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous. It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges-judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

JURY ROOM DELIBERATIONS: INTRODUCTION

Let me explain some things about your deliberations in the jury room, and your possible verdicts. The first thing that you should do in the jury room is choose someone to be your foreperson. This person will help to guide your discussions, and will speak for you here in court.

Once you start deliberating, do not talk to the jury officer or to me or to anyone else about the case. We must communicate in writing. Write down your message, sign it, and then give it to the jury officer. He will give it to me, and I will respond as soon as I can. I may have to talk to the lawyers about what you have asked, so it may take me some time to get back to you. Your messages should normally be sent to me through your foreperson.

If you want to see any of the exhibits that were admitted into evidence, you may send me a message, and those exhibits will be provided to you.

One more thing about messages. Do not ever write down or tell anyone, other than among yourselves, how you stand on your votes. For example, do not write down or tell anyone that you are split 5-4, or 8-1, or whatever your vote happens to be. That should stay secret until you are finished.

EXPERIMENTS, RESEARCH AND INVESTIGATION

Remember that you must make your decision based only on the evidence that you saw and heard here in court. This means that you must not try to gather any information about the case on your own while you are deliberating.

For example, do not conduct any experiments inside or outside the jury room; do not bring any books, like a dictionary, or anything else with you to help you with your deliberations; do not conduct any independent research, reading or investigation about the case; and do not visit any of the places that were mentioned during the trial.

Make your decision based only on the evidence that you saw and heard here in court.

COURT HAS NO OPINION

Let me finish up by repeating something that I said to you earlier. Nothing that I have said or done during this trial was meant to influence your decision in any way.

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_____ /

VERDICT FORM

Follow with a standard verdict format; typically organized in a “decision-tree” question-and-answer form (i.e., “if no, stop; if yes please continue”)

Dated:

Foreperson

There are no further questions. You have finished. Please notify the bailiff that your work has concluded and that you have reached verdicts in the case. Do not reveal what the verdicts are, and bring the book containing this verdict form with you into court when you are summoned. It may take several minutes to notify the necessary people and for the judge to suspend his other business, so please be patient.